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WHSR PLEASE PASS TO USTR - DAVID OLIVER

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SUBJECT: PANAMA ANNOUNCES KEY TAX HAVEN SOLUTION - A PATH  
TO BEARER SHARES IMMOBILIZATION

REF: PANAMA 255

¶1. (SBU) Summary. The GOP announced on April 7 that it intends to regulate bearer shares. This breakthrough, when fully executed, will solve Panama's most pressing transparency issue, fulfill the USG's most prominent financial crimes regulatory recommendation, and remedy Panama's sole grave remaining anti-money laundering/counter-terrorism finance (AML/CFT) deficiency - lack of access to beneficial ownership and control information. How important is this step? Bearer shares serve as an extremely powerful 'cloaking device' for financial crimes. Held anonymously by "the bearer," these instruments allow the persons possessing them to store and transfer funds with little risk of detection. Without their effective regulation through immobilization (registration), disclosures under any future Tax Information Exchange Agreement (TIEA) will remain incomplete - blocked by the secrecy of beneficial ownership of the corporation. Immobilization requires the registration of the beneficial owners of those shares -- as opposed to mere disclosure of directors and resident agents of anonymous corporations issuing the shares. The GOP's statement does not specifically mention immobilization. However it telegraphs this measure by mandating formation of a "working team" to "propose concrete actions" to "increase levels of responsibility and transparency with respect to the titling of anonymous societies." End summary.

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Lawyers vs. Bankers on Bearer Shares  
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¶2. (SBU) Panama's announcement resulted from concerns publicly expressed by Chairman Rangel and Representative Levin, placement of Panama on the G20/OECD tax haven "grey list" of countries committed to yet not implementing reforms, and - most importantly - recognition by Panamanians that they must undertake this step in order to retain their competitiveness and continue to attract direct foreign investment. Ambassador Stephenson has urged key GOP and private sector interlocutors to address this issue proactively, both as a matter of necessary reform and as a means of avoiding the risk of derailing FTA consideration in Congress. In order to arrive at this announcement, the GOP overruled objections of powerful constituencies, most prominently lawyers, who enjoy the sole right under Panamanian law to establish corporations and collect annual corporate maintenance fees (reftel). Given the estimated existence of 400,000 anonymous corporations, the GOP

presumably impacted a substantial stream of revenue. In its September 2006 Financial Sector Assessment of Panama, the IMF notes that lawyers "are not subject to any AML/CFT requirement even when acting as company service providers." By mandating a "working team" to "propose concrete actions" to "increase levels of responsibility and transparency with respect to the titling of anonymous societies," the GOP has taken aim at the lawyers holding out for the status quo.

13. (SBU) On the other hand, bankers in Panama are subject to an array of AML/CFT requirements and have little use for anonymous corporations. Panama's generally well-regulated banking sector views them as an impediment to "know thy customer" requirements. In a recent meeting with Ambassador Stephenson, Citibank Panama's General Manager Marcelo Gorrini echoed the sentiments of all the bankers we have spoken with - the risk of accepting anonymous corporate accounts and associated bearer shares without knowing the beneficial owners is unacceptable - from an AML/CFT compliance standpoint and a risk analysis standpoint. As President Torrijos noted to Codel Hoyer on April 5, banks in Panama are in the business of legitimate lending for projects and businesses that grow the economy. However, banks in other jurisdictions might not have the same scruples in accepting bearer bonds that are issued in Panama. When looking at offshore deposits, other "tax havens" dwarf Panama. Indeed, in 2002, domestic deposits overtook foreign deposits and have remained larger through today.

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Combating Money Laundering  
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14. (SBU) The authors of the 2006 IMF report grade Panama on the Financial Action Task Force (FATF) 40 9 recommendations. In 39 of those recommendations, Panama scores as compliant or largely compliant; in 9 recommendations Panama is rated as partially compliant. Panama fails ("non-compliant") only Recommendation 33: "Legal Persons-Access to beneficial ownership and control information." The report notes that "disclosure is made of the identity of directors and resident agents only," in the Public Registry, "while disclosure of the identity of shareholders is not required." Various Treasury Department officials have expressed concern over bearer shares, which they have characterized as the key outstanding issue in Panama's path toward quality. The State Department's 2009 International Control of Narcotics Strategy Report (INCSR) cites "commendable efforts to enhance Panama's ability to prevent, detect, investigate, and prosecute financial crimes, including money laundering and terrorist financing." However, it emphasizes that, "The issuance of bearer shares are of concern and the GOP should take adequate steps (such as immobilization) to assure that these instruments are not used for money laundering."

How Bearer Bonds Relate to Tax Haven Status and Tax  
Information Exchange - Non-Panamanians Use Them to Hide Income

15. (SBU) Most importantly, obstacles to identifying beneficial owners in the case of bearer share companies emerge not with Panamanians, but rather with foreign residents or companies domiciled abroad. According to the IMF, this phenomenon occurs because Panamanian lawyers often only deal with foreign lawyers and company service providers, but not the real owner of the company being incorporated. Our law enforcement representatives at Post tell us that bearer shares impede their investigations. When they ask to interview the resident agent (attorney) for an anonymous corporation, the attorney has no obligation to know - and hence disclose - the beneficial owners. When they interview the director of a suspect anonymous corporation, they often end up interviewing a maid or taxi driver, while the beneficial owners of the shares - and hence the firm - remain undiscovered. This phenomenon occurs despite extensive rights granted under the U.S.-Panama Mutual Legal Assistance Treaty (MLAT) and the deep cooperation of Panamanian law enforcement

agencies. Thus, even if a Tax Information Exchange Agreement were in force between the United States and Panama, it would not result in the complete exchange of information without immobilization of bearer shares.

¶16. (SBU) On February 26, 54 members of Congress signed a letter accusing Panama of being a tax haven based on a December 2008 GAO Report titled, "Large U.S. Corporations and Federal Contractors with Subsidiaries in Jurisdictions listed as Tax Havens or Financial Privacy Jurisdictions." Concerning Panama, it contains a crucial flaw: the vast majority of U.S. corporations listed therein have NOT/NOT established subsidiaries in Panama with a primary purpose to evade U.S. taxation. Instead, they are using Panama as a platform to expand market share throughout Latin America - additional market share that often creates jobs in the United States. For instance, on March 26, Caterpillar broke ground on a \$30 million sales and training center on the former Howard Air Base. Dell employs 1,800 people at its logistics center, also at Howard - where it joins, among others, 3M and Singapore Aerospace Technologies. Procter & Gamble moved its regional operations from Caracas and is rapidly ramping up to 400 employees. Merck also conducts regional operations from Panama. As Deloitte's Barsallo notes, Panama solicits physical presence - the opposite of a conventionally held view of a tax haven as solely a jurisdiction to file articles of incorporation. Panama attracted \$2.4 billion in FDI in ¶2008. It has embarked on a \$5.25 Canal expansion project; its privatized ports handled 3.3 billion TEU's in 2008 (up from 250,000 TEU's in 1997). Tourist arrivals reached 1.6 million last year, up from 600,000 in 2000. Copa Airlines has expanded dramatically in recent years, offering service to nearly every major city in Latin America. U.S.-based Kansas City Southern and MiJack Industries operate the railroad paralleling the Canal. The bottom line: Panama's principal

economic activity is decidedly not encouraging tax evasion.

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COMMENT  
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¶17. (SBU) Comment: In making today's announcement, the GOP took a gutsy, proactive stance - and also a whole lot of heat from a powerful, well-connected domestic constituency (two former Panamanian Ambassadors to Washington head law firms issuing bearer shares). The GOP, at our urging, has cast this as a Panamanian decision to do the right thing to ensure Panama's future as a quality destination for financial services and foreign investment. We have worked behind-the-scenes with the President and Vice President to reduce the impression of gringo arm-twisting (which unhelpfully fuels the sovereignty defense - poor Panama being beat up by the gringos again-the lawyers are trying to obscure the real issues, namely that Panama's economy gains almost no benefit from rich lawyers issuing bearer shares). While acknowledging Congressional concerns and their impact on bringing the FTA to a vote, we have downplayed the connection to the FTA to the extent possible to avoid fueling the argument that the gringos keep moving the goal posts on the FTA and really have no intention of ever approving it. We have focused instead on the enormous downside of remaining on the OECD grey list (or slipping to the OECD black list) and shared our view that, with the playing field shifting as rapidly as it is, it is inevitable that Panama will address these tax haven issues. The only question is whether they do it with grace and style and in time to help get the FTA approved, or kicking and screaming later. End Comment.  
STEPHENSON